

Senate Action on the Water Resources Development Act (WRDA)

The Senate Environment and Public Works (EPW) Committee passed its version of a WRDA bill on June 23.

Senate EPW Committee staff have indicated that the Senate would like to consider the WRDA bill on the floor after the Senate returns from its annual August recess on September 7, 2004.

Overall Messages:

- AAPA and our member ports are pleased the Committee approved a WRDA bill and look forward to working with the Senate to pass a bill that provides an effective set of policies to guide the Corps' Civil Works mission.
- Additionally, AAPA is pleased that the Committee added a provision to the legislation that would lift restrictions on the government hopper dredge fleet in the Pacific Northwest and hopes that such a policy will be widely applied to the entire government dredge fleet.

There are a number of provisions in the bill that would make it more difficult for the Corps to execute all types of projects, not just navigation projects. One provision affects the port system exclusively. Other sections of the bill affect the Corps' planning process, and some sections would have significant impacts on the execution of individual projects.

PORT SYSTEM

One section of the Senate WRDA bill directly affects the port system. A second-degree amendment by Chairman Inhofe authorizes a national port study that would be conducted by the Secretary of the Army in consultation with the Secretary of Transportation. The study would analyze the ability of deepwater port infrastructure to meet current and projected economic needs, including the availability of alternate transportation modes, the impact of larger cargo vessels on existing port capacity and cost-effective congestion management alternatives.

Message:

- The U.S. public port industry believes that a national port study will reiterate the proven benefits of deepdraft waterborne commerce to the American public that have been reported in previous studies on the marine transportation system and will demonstrate the growing gap in Federal spending on port infrastructure. We urge the Senate to work with AAPA to design a more meaningful port sector initiative to address the challenges faced by ports rather than a duplicative study. AAPA stands ready to work with Congress to develop such an initiative.

PLANNING

Section 1009 creates a Water Resources Planning Council within the Army's Civil Works function. This council would consist of non-federal interests from "various water resource project purposes," as well as state resource agencies, the Department of the Interior, the Department of Agriculture and the Council on Environmental Quality. The Planning Council would, among other things:

1. provide "technical and managerial assistance" to district engineers;
2. identify, evaluate and certify all existing and new methods, models or procedures used in the Corps' planning process;
3. establish milestones to improve the timeliness and effectiveness of the water resources planning process; and
4. develop and maintain systems for technology transfer.

Under Section 1008, the Secretary, in collaboration with this Council, would revise the Corps' planning guidelines, regulations and circulars within 18 months and again every five years. Feasibility studies would be limited to three years' duration, though no enforcement mechanism is provided. Cost-benefit analyses would be based on a "realistic" funding scenario and would be expanded to include quantified and unquantified benefits and costs of several types, including:

1. local, regional and national economic;
2. environmental;
3. social; and
4. cultural.

Section 1010 establishes a peer review process for all project studies and reports that require Congressional authorization. The Inspector General of the Army is required to convene an independent peer

review panel of three to seven people of "broad and diverse" backgrounds, with "necessary technical or scientific expertise" and significant experience in the geographic area or type of ecological conditions being reviewed. The peer review would be conducted after the study or report has been finished and is otherwise ready for referral to Congress, thus delaying the referral by at least six months.

Messages:

- Many of the changes in Section 1008 are positive. Feasibility studies would be expanded to explicitly include environmental, social and cultural costs and benefits, as well as local and regional economic costs and benefits. It is not clear, however, what role the additional assessment would play in the Chief's recommendation to Congress, which is now dictated by a single measure: national economic development.
- Additionally, while limiting feasibility studies to three years would allow for better project planning, it is not clear how this will be enforced or what would become of studies exceeding three years.
- Section 1009 is very problematic. This Council is an overly bureaucratic approach to implementing a continuous improvement program for the Corps' planning responsibilities. While we support the provision's intention, requiring any group to "certify" every aspect of Corps planning is an impossible task.
- Section 1010 should be replaced by the carefully negotiated "peer review" provision in the House-passed WRDA bill. The House provision is preferable to the Senate provision because it sets a threshold for projects subject to review and guarantees that all reviews are done concurrently with studies or reports rather than after completion.

PROJECTS

The Senate bill contains a significant revision of fish and wildlife mitigation requirements for projects in Section 1011. Most relevant to navigation projects is a requirement for "in-kind" mitigation (requiring the acquisition and restoration of the "same number of acres of habitat that fully replace the hydrologic and ecological functions and characteristics of each acre of habitat adversely affected by the project"). Many port construction and maintenance projects have successfully used out-of-kind mitigation, yet this legislation would impose a set of rigid mitigation requirements on top of the current regulatory processes of the Clean Water Act, Endangered Species Act, Fish and Wildlife Conservation Act, and the Coastal Zone Management Act.

The Senate bill takes the positive step of allowing for local sponsor work-in-kind on flood control projects but does not expand this authority to navigation projects. By contrast, the House allowed credits for in-kind contributions for navigation in its version of WRDA, consistent with AAPA's recommendations.

The Senate bill does not include a cost-sharing change provision advocated by AAPA, included in the House-passed WRDA bill. This provision would reflect the growing size of general cargo vessels by

increasing the channel depth threshold for significantly higher local participation on construction and maintenance projects.

Finally, the Senate bill does not include a mechanism to ensure that all funds collected in the Harbor Maintenance Trust Fund are used for their intended purposes. The HMTF surplus is projected to grow to more than \$2.6 billion in fiscal year 2005 and to \$5 billion by 2010, yet there is a dramatic and growing backlog of maintenance needs at our nation's ports.

Messages:

- The Senate should strike the provisions requiring in-kind mitigation only.
- Credit for local sponsor work-in-kind should be expanded to include navigation projects.
- The Senate should add a provision to its WRDA bill that was included in the House-passed version of WRDA that would increase the channel depth threshold for higher cost-sharing on deep draft navigation projects to 53 feet.
- The Senate should add language to guarantee that all the funds deposited in the HMTF are actually spent on their intended purposes, similar to the budget treatment for the Highway Trust Fund.



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